

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE: . Case No. 01-1139 (JKF)
W.R. GRACE & CO., .
et al., .
Debtors. .
824 Market Street
Wilmington, DE 19801
Debtors. .
October 18, 2010
10:48 a.m.

TRANSCRIPT OF TELEPHONIC HEARING
BEFORE HONORABLE JUDITH K. FITZGERALD
UNITED STATES BANKRUPTCY COURT JUDGE

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1 THE COURT: Are the parties on for W.R. Grace?

2 OPERATOR: Yes, Your Honor.

3 THE COURT: Okay. This is the matter of W.R. Grace
4 01-1139. The participants I have listed by phone are Scott
5 Baena, Janet Baer, David Blabey, Deanna Boll, Matthew Bonanno,
6 Thomas Brandi, Claire Burke, Elizabeth Cabraser, Kellie Cairns,
7 Linda Casey, Gabriella Cellarosi, Richard Cobb, Tiffany Cobb,
8 George Coles, Andrew Craig, Leslie Davis, Michael Davis,
9 Elizabeth DeCristofaro, Martin Dies, John Donley, Melanie
10 Dritz, Michael Duggan, Terrance Edwards, Marion Fairey, Debra
11 Felder, Richard Finke, Roger Frankel, Theodore Freedman,
12 Michael Giannotto, James Green, Robert Guttmann, Sarah Harnett,
13 Douglas Herrmann, Roger Higgins, Daniel Hogan, Robert
14 Horkovich, Mark Hurford, Brian Kasprzak, Matthew Kramer, Arlene
15 Krieger, Michael Linn, Peter Lockwood, but he's here in court,
16 Edward Longosz, Kevin Mangan, Francis Monaco, Tara Mondelli,
17 James O'Neill, but he's here in court, David Parsons, Adam
18 Paul, Carl Pernicone, Margaret Phillips, John Phillips, Mark
19 Plevin, Francine Rabinovitz, Joseph Radecki, Alan Rich, Andrew
20 Rosenberg, Alan Runyan, Jay Sakalo, Darrel Scott, Mark
21 Shelnitz, Stephen Shimshak, Jason Solganick, Daniel Speights,
22 Shayne Spencer, Theodore Taconelli, Edward Westbrook, Jennifer
23 Whitener, Jeffrey Wisler, Richard Wyron, Rebecca Zubaty, and
24 Kathleen Davis. I'll take entries in court please.

25 MR. O'NEILL: Good morning, Your Honor. James

1 O'Neill, Pachulski, Stang, Ziehl & Jones, co-counsel for the
2 debtors.

3 MR. HURFORD: Good morning, Your Honor. Mark
4 Hurford, Campbell Levine, for the ACC.

5 MR. LOCKWOOD: Good morning, Your Honor. Peter
6 Lockwood for the ACC.

7 MR. KLAUDER: Good morning, Your Honor. David
8 Klauder of the United States Trustee.

9 THE COURT: Mr. O'Neill.

10 MR. O'NEILL: Your Honor, I believe Ms. Baer is on
11 the phone today and I'll just state for purposes of the agenda
12 that the Court -- first several matters are continued and the
13 Court has already entered orders on Number 3 and on Number 4
14 which will take us to Item Number 5 and I believe Ms. Baer is
15 going to address the Court on that matter.

16 MS. BAER: That's correct, Mr. O'Neill. Thank you.
17 Good morning, Your Honor. Janet Baer on behalf of the debtors.

18 THE COURT: Good morning.

19 MS. BAER: The only contested matter and it's
20 actually not contested, the only matter left on the agenda is
21 Matter Number 5 which is the debtors' motion for entry of an
22 order approving the purchase and merger of a transaction in
23 which the debtor will be buying a business known as Synthetech,
24 Inc. Your Honor, after filing the motion and the draft order
25 we received two inquiries that we have resolved. I understand

1 that this morning Mr. O'Neill delivered to you a revised draft
2 order and blackline which shows you the resolution. Your
3 Honor, do you have that?

4 THE COURT: I have it, but I haven't had a chance to
5 see it. I got it just as I was walking into court this
6 morning.

7 MS. BAER: Okay. I'm happy to walk you through it.
8 It's actually very simple, and if you can look at the blackline
9 I'll explain the change that we've made at the request of the
10 personal injury committee and the personal injury Future
11 claimants representative.

12 THE COURT: Okay, the blackline of the order or the
13 agreement?

14 MS. BAER: Of the order, Your Honor. The agreement
15 has not changed.

16 THE COURT: Oh, all right. Well, I have the order
17 here, I'm sorry, I thought there had been some change to the
18 agreement.

19 MS. BAER: No, Your Honor. The agreement is
20 identical. There really are just one little change to the way
21 in which the transaction will be done and one slight
22 clarification. Your Honor, if you look at the draft order
23 Paragraph 4 has been revised. The ACC and the PIFCR were
24 concerned that if the new entity which is identified as Mallard
25 Acquisition Company after the purchase will be merged into

1 Grace Conn. They wanted some advance notice, so, that they
2 could kind of go through and verify with respect to due
3 diligence so there wouldn't be any unknown or potential
4 liabilities that would result to Grace Conn.

5 As a result, your Honor, in Paragraph 4 we've revised
6 it to indicate that upon 30 days prior written notice to all of
7 the official committees and the future claimants
8 representatives, and so long as there are no objections filed,
9 then the debtors are authorized, but not required to do the
10 merger of Mallard Acquisition into Grace Conn.

11 Your Honor, that is essentially negative notice, we
12 give them advance notice and then they have questions or
13 issues, we can resolve those, and if there are no issues then
14 after that 30 days passes we'll have the authority to go ahead
15 and do that merger.

16 THE COURT: All right, that's fine.

17 MS. BAER: Your Honor, the second thing I just wanted
18 to clarify is the unsecured creditors committee was a little
19 concerned about some provisions in the agreement that discussed
20 the possibility that before the board of Synthetech approves
21 the transaction with Grace and it goes final if they got some
22 sort of additional bids then in their fiduciary duty they
23 needed to consider those and potentially deal with those. The
24 unsecured creditors committee wanted us to clarify the
25 avoidance of doubt, the debtors would have to obtain a further

1 Court order for any amendment to the merger agreement that
2 results in the total merger consideration exceeding the
3 19,176,573 that's approved in the current agreement document.
4 We thought that was pretty obvious, obviously the debtors are
5 getting authority to do this transaction at these price points
6 and if there would become some sort of a bidding war because of
7 copying bids and the like, of course, we would have to come
8 back to court, Your Honor.

9 THE COURT: All right.

10 MS. BAER: With that clarification, Your Honor, I
11 believe that the order I know has been circulated to all of the
12 committees and the FCRs and they are in agreement with this
13 form, and we would ask that the Court enter the order approving
14 the transaction.

15 THE COURT: Mr. Klauder, I didn't see any comments
16 from the U.S. Trustee, but --

17 MR. KLAUDER: No.

18 THE COURT: -- since you're here I wanted to be sure
19 you didn't have --

20 MR. KLAUDER: Although I haven't seen the revised
21 order, if I can --

22 THE COURT: I can hand you up my blackline version.

23 MR. KLAUDER: Thanks.

24 THE COURT: I'm just going to give Mr. Klauder a few
25 minutes to take a look at the changes.

1 MS. BAER: Thank you, Your Honor. I apologize to Mr.
2 Klauder for not having sent him a copy of it.

3 THE COURT: Does anybody else while Mr. Klauder is
4 looking have any comments on this order?

5 (No audible response)

6 THE COURT: Okay, then I'll just wait a few minutes
7 to hear from him.

8 MR. LOCKWOOD: Your Honor, while we're waiting as
9 sort of a housekeeping matter.

10 THE COURT: Yes.

11 MR. LOCKWOOD: I apologize for even asking this, but
12 I have interested constituents, could -- does Your Honor have
13 any kind of estimate as to how --

14 THE COURT: It's not going to be by the end of the
15 month, Mr. Lockwood. I'm still, you know, we're working
16 through this on an objection by objection basis and it's taking
17 a very long time to document the places in the record where X
18 happened and the legal issues that are involved. So, I do have
19 a draft that's circulating back and forth of this opinion, but
20 -- an order, but it's not going to be done by the end of
21 October. I apologize for that, but we have been working
22 diligently and it's just not going to be done.

23 MR. LOCKWOOD: Nobody's trying to put untoward
24 pressure or anything, but, you know, we're all trying to figure
25 out whether we're talking about hopefully by year end or --

1 THE COURT: Oh, I'm hoping by year end, in fact, I
2 may have to pull all my hair out one strand at a time if it's
3 not done by year end. So, yes, I hope to have it finished by
4 the year end, but it won't be the end of this month.

5 MR. LOCKWOOD: Thank you very much, Your Honor.

6 MR. KLAUDER: Your Honor, I've -- no objection to the
7 newer --

8 THE COURT: All right. Thank you, Mr. Klauder.

9 MR. KLAUDER: Thank you.

10 THE COURT: All right. The United States Trustee has
11 no objection, so, when I find the non blackline version, which
12 I had a second ago and put down -- I haven't moved from where
13 I'm sitting, how could I have lost the order. I'm sorry I have
14 two blacklines and I thought I had the original. Oh, on this,
15 okay, there we go, thank you. All right. I've signed the
16 order at Item Number 5.

17 MS. BAER: Thank you, Your Honor. We appreciate
18 that. That concludes the agenda unless anybody else has
19 anything, the debtors have nothing else to raise.

20 THE COURT: Anyone have any additional matters?

21 (No audible response)

22 THE COURT: All right. We're adjourned. Thank you.

23 MR. O'NEILL: Thank you, Your Honor.

24 MS. BAER: Thank you, Your Honor.

25 * * * * *

C E R T I F I C A T I O N

I, COLETTE MEHESKI, court approved transcriber, certify that the foregoing is a correct transcript to the best of my ability from the official electronic sound recording of the proceedings in the above-entitled matter, and to the best of my ability.

/s/ Colette Meheski

COLETTE MEHESKI

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